

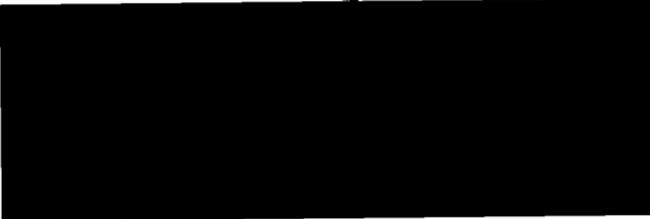


U.S. Citizenship
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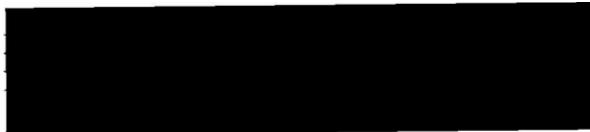
D8



FILE: EAC 05 064 52917 Office: VERMONT SERVICE CENTER

Date: JUN 12 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a tennis and fitness club. The beneficiary is a 28-year old citizen of Croatia. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him in the United States as a tennis professional/coach for a period of three years at an annual salary of \$52,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has received sustained national or international acclaim and is one of a small percentage who have risen to the very top of his field of endeavor.

On appeal, counsel for the petitioner submits a brief and additional documentation.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

- (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
- (4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
- (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
- (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
- (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
- (8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

On appeal, counsel asserts that Citizenship and Immigration Service (CIS) erred in denying the petition as the petitioner has submitted overwhelming evidence of the beneficiary's qualification as an alien of extraordinary ability. Counsel asserts that "[I]f one played professional tennis successfully, one can definitely coach and teach professional players on their level." Counsel cites two examples of tennis players who have successfully coached players who have ranked competitively by the Association of Tennis Professionals (ATP). Nonetheless, while a tennis competitor and a coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Nevertheless, this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as an

athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case, we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will examine whether the petitioner has demonstrated the beneficiary's extraordinary ability as a coach or as an athlete. If the beneficiary has demonstrated extraordinary ability as an athlete, we will consider the level at which he has successfully coached.

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial of the petition. The record is insufficient to establish that the beneficiary is an alien with extraordinary ability in athletics.

First, there is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner has submitted evidence that it alleges meets the following criteria.¹

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

For criterion one, the petitioner submitted an August 9, 2004 letter from [REDACTED] the president of the [REDACTED] who stated that the beneficiary was named "Coach of the Year" in 2003 by the Slavonia Tennis Association and the State Coaches Association. However, the petitioner submitted no corroborative evidence with the petition or in response to the director's request for evidence (RFE) dated January 12, 2005, reflecting that the beneficiary received this award. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner also submitted a letter from the president of the Tennis Club "Olimpija" Osijek, who stated that the beneficiary was recognized as the "Tennis Club Olimpija" Osijek and "Sports Society Olimpija" Osijek "Coach and Player of the Year 2002." The petitioner submitted no primary evidence with the petition or in response to the RFE to corroborate the beneficiary's receipt of this award and submitted no evidence to establish that recognition as coach of the year by the Tennis Club "Olimpija" Osijek, or the "Sports Society Olimpija" Osijek are nationally or internationally recognized awards of excellence in tennis. *Id.*

On appeal, the petitioner submitted an April 13, 2005 letter from the secretary of the Croatian Tennis Association, verifying that recognition as the "Coach and Player of the Year" by the Tennis Club "Olimpija" Osijek and awarded to the beneficiary in 2002 is "nationally recognized by [the] Croatian Tennis Association the governing institution for tennis sport in Croatia."

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The evidence is sufficient to establish that the beneficiary meets this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Counsel stated that the beneficiary meets this criterion based on his membership in the United States Tennis Association, the Croatian Tennis Professionals Coaches Association and of Tennis Coaches Croatia. The petitioner submitted a December 6, 2004 letter from the Croatian Tennis Association reporting the beneficiary's "sport results;" however, it submitted no primary evidence of the beneficiary's membership in these associations. Further, the petitioner submitted no evidence of the membership criteria, and no evidence to reflect that membership in the named associations requires outstanding achievements as a condition of membership. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the petitioner has not established that the beneficiary satisfies this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.

With the petition, the petitioner submitted a copy of a document entitled "ATP Tour Singles Rankings" for July 22, 1996; documents identified by counsel as tournament draw sheets; a copy of a 1995 advertisement, apparently for a tennis racket, in which the beneficiary appeared; and copies of photographs that the petitioner indicates are of the beneficiary, but that does not indicate that they were published with articles about the beneficiary or his work.

In response to the director's RFE, the petitioner submitted copies of articles from the Tennisclub Nerghofen Club [REDACTED] and the [REDACTED]. The documents submitted are primarily about specific tennis matches in which the beneficiary had played or was scheduled to play. Three articles that appear to be about the beneficiary are articles that appeared in the [REDACTED] March 14, 1995 and a November 20, 1997 article from the [REDACTED]. Three published articles about the beneficiary during a 20-year career is not evidence of sustained acclaim. Further, the petitioner submitted no evidence that any of these publications are professional or major trade publications or are major media.

The petitioner's evidence does not establish that the beneficiary satisfies this criterion.

Counsel states that the beneficiary also qualifies for the visa classification based on "comparable evidence" as permitted by 8 C.F.R. § 214.2(o)(3)(iii)(C), which states that if the criteria in paragraph 8 C.F.R. § 214.2(o)(3)(iii) do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. The petitioner submitted letters from tennis coaches, professionals, and players who attest to the beneficiary's accomplishments as a tennis coach. Many of the letters are identical, and indicate that the beneficiary "worked with [REDACTED] former top 100 WTA World Tour ranked lady,"

coached [REDACTED] “who won 1999 Junior National Championships Boys 16 and under division,” “coached [REDACTED] who won Croatian Junior National Championships 18 and under division in 2003 and represented Croatia at European Team Junior Cup same year,” and “coached [REDACTED] who was ranked in the top 20 ITF Junior World Rankings in 2002.”

[REDACTED] stated in an undated letter, that the beneficiary “privately coached” his son, [REDACTED] from 2002 to 2003, and that his son won the 2003 Croatian National Junior Championships for boys 18 and under [REDACTED] stated that the beneficiary coached him from 1999 to 2001, and that during that time he won the National Junior Tennis Championships for boys 16 and under, and that he was a runner-up at the World Team Junior Tennis Championship [REDACTED] states that the beneficiary has coached him since 2001, and that he was ranked in the top 20 by the World Tennis Association in 2002, and has “won many national and international junior tennis tournaments.”

The petitioner, however, has not established that the provisions of 8 C.F.R. § 214.2(o)(3)(iii) do not readily apply to the beneficiary’s occupation. Therefore, the comparable evidence provision of the regulation is inapplicable.

While the letters attesting to the beneficiary’s skills as a tennis coach would bolster other evidence of extraordinary ability, the record contains no firsthand evidence of achievements by players that the beneficiary has coached. This evidence is insufficient, without more, to establish eligibility for this restrictive visa classification, which requires extensive documentation of extraordinary achievement.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.